

(b) *Definitions.* The following definitions apply for the purposes of this part:

(1) *Applicant* means any person, state, or municipality that has applied for a license for an unlicensed, constructed project and any owner of an unlicensed, constructed project for which the Commission has determined that an application for license must be filed.

(2) *Owner* means any person, state, or municipality, or combination thereof, that has a real property interests in a water power project sufficient to operate and maintain the project works.

(3) *Authorized Commission representative* means the Director of the Office of Hydropower Licensing, the Director of the Division of Inspections, the Regional Engineer, or any other member of the Commission staff whom the Commission may specifically designate.

(4) *Condition affecting the safety of a project or project works* means any condition, event, or action at the project which might compromise the safety, stability, or integrity of any project work or the ability of any project work to function safely for its intended purposes, including navigation, water power development, or other beneficial public uses; or which might otherwise adversely affect life, health, or property. Conditions affecting the safety of a project or project works include, but are not limited to:

(i) Unscheduled rapid draw-down of impounded water;

(ii) Failure of any facility that controls the release or storage of impounded water, such as a gate or a valve;

(iii) Failure or unusual movement, subsidence, or settlement of any part of a project work;

(iv) Unusual concrete deterioration or cracking, including development of new cracks or the lengthening or widening of existing cracks;

(v) Piping, slides, or settlements of materials in any dam, abutment, dike, or embankment;

(vi) Significant slides or settlements of materials in areas adjacent to reservoirs;

(vii) Significant damage to slope protection;

(viii) Unusual instrumentation readings;

(ix) New seepage or leakage or significant gradual increase in pre-existing seepage or leakage;

(x) Sinkholes;

(xi) Significant instances of vandalism or sabotage;

(xii) Natural disasters, such as floods, earthquakes, or volcanic activity;

(xiii) Any other signs of instability of any project work.

(5) *Constructed project* means any project with an existing dam.

(6) *Dam* means any structure for impounding or diverting water.

(7) *Development* means that part of a project comprising an impoundment and its associated dams, forebays, water conveyance facilities, power plants, and other appurtenant facilities. A project may comprise one or more developments.

(8) *Modification* means any activity, including repair or reconstruction, that in any way changes the physical features of the project from the state reflected in the plans or drawings or other documents filed with the Commission.

(9) *Project emergency* means an impending or actual sudden release of water at the project caused by natural disaster, accident, or failure of project works.

(10) *Regional Engineer* means the person in charge of the Commission's regional office for the region (Atlanta, Chicago, Fort Worth, New York, or San Francisco) where a particular project is located.

(11) *Act* means the Federal Power Act.

[Order 122, 46 FR 9036, Jan. 28, 1981, as amended at 49 FR 29370, July 20, 1984]

§ 12.4 Staff administrative responsibility and supervisory authority.

(a) *Administrative responsibility.* The Director of the Office of Hydropower Licensing is responsible for administering the Commission's project safety program and reports directly to the Chairman of the Federal Energy Regulatory Commission.

(b) *Supervisory authority of the Regional Engineer or other authorized representative.* (1) Any water power project

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and the construction, operation, maintenance, use, repair, or modification of any project works are subject to the inspection and the supervision of the Regional Engineer or any other authorized Commission representative for the purpose of:

(i) Achieving or protecting the safety, stability, and integrity of the project works or the ability of any project work to function safely for its intended purposes, including navigation, water power development, or other beneficial public uses; or

(ii) Otherwise protecting life, health, or property.

(2) For the purposes set forth in paragraph (b)(1) of this section, a Regional Engineer or other authorized Commission representative may:

(i) Test or inspect any water power project or project works or require that the applicant or licensee perform such tests or inspections or install monitoring instruments;

(ii) Require an applicant or a licensee to submit reports or information, regarding:

(A) The design, construction, operation, maintenance, use, repair, or modification of a water power project or project works; and

(B) Any condition affecting the safety of a project or project works or any death or injury that occurs at, or might be attributable to, the water power project;

(iii) Require an applicant or a licensee to modify:

(A) Any emergency action plan filed under subpart C of this part; or

(B) Any plan of corrective measures, including related schedules, submitted after the report of an independent consultant pursuant to §12.37 or any other inspection report;

(iv) Require an applicant or licensee to take any other action with respect to the design, construction, operation, maintenance, repair, use, or modification of the project or its works that is, in the judgment of the Regional Engineer or other authorized Commission representative, necessary or desirable.

(v) Establish the time for an applicant or licensee to provide a schedule for or to perform any actions specified in this paragraph.

(c) *Appeal, stay, rescission, or amendment of order or directive.* (1) Any order or directive issued under this section or under the provisions of subparts B through E of this part by a Regional Engineer or other authorized Commission representative may be appealed to the Commission under §385.207 of this chapter.

(2) Any order or directive issued under this section by a Regional Engineer or other authorized Commission representative is immediately effective and remains in effect until:

(i) The Regional Engineer or other authorized Commission representative who issued the order or directive rescinds or amends that order or directive or stays its effect; or

(ii) The Commission stays the effect of the order or directive, or amends or rescinds the order or directive on appeal.

(3) An appeal or motion for rescission, amendment, or stay of any order or directive issued under this section must contain a full explanation of why granting the appeal or the request for rescission or amendment of the order or directive, or for stay for the period requested, will not endanger life, health, or property.

[Order 122, 46 FR 9036, Jan. 28, 1981, as amended by Order 225, 47 FR 19056, May 3, 1982; 49 FR 29370, July 20, 1984]

§ 12.5 Responsibilities of licensee or applicant.

A licensee or applicant must use sound and prudent engineering practices in any action relating to the design, construction, operation, maintenance, use, repair, or modification of a water power project or project works.

Subpart B—Reports and Records

§ 12.10 Reporting safety-related incidents.

(a) *Conditions affecting the safety of a project or its works—(1) Oral reports.* An applicant or licensee must report by telephone to the Regional Engineer any condition affecting the safety of a project or projects works, as defined in §12.3(b)(4). The initial oral report must be made as soon as practicable after that condition is discovered, without unduly interfering with any necessary